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ABSTRACT

One of 52 theoretical papers on school crime and its relation to poverty, this chapter maintains that social labeling is a pervasive and necessary social phenomenon. However, inaccurate social labeling plagues contemporary juvenile justice systems. Relevant examples include legal adjudication categories such as status offender, persons in need of supervision, children in need of supervision, and juveniles in need of supervision. The only way to make the juvenile justice system effective is to develop accurate social labeling, establish a behaviorally discrete legal lexicon, and provide appropriate social services based on precise, valid, and time-limited social labels. (Author/MLF)

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LEGAL LEXICON, SOCIAL LABELING, AND JUVENILE JUSTICE *

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ABSTRACT

Social labeling is a pervasive and necessary social phenomenon. However, inaccurate social labeling plagues contemporary juvenile justice systems. Relevant examples include legal adjudication categories such as status offender, PINS, CHINS, and JINS. The only way to make the juvenile justice system effective is to develop accurate social labeling, establish a behaviorally discrete legal lexicon, and provide appropriate social services based upon precise, valid, and time-limited social labels.

Introduction

Recent theory and research have pointed to a number of critical deficiencies in contemporary criminal justice systems, particularly juvenile justice systems. For example, correctional programs which have resulted in the incarceration of juveniles, even for "rehabilitative" purposes, have been found to be inordinately overpopulated and expensive to administer (Feldman, Wodarski, Flax, & Goodman, 1972, 1973). Moreover, it has been difficult to achieve positive behavioral change in juveniles remanded to such institutions, in part because the immediate change environment is populated by peers who primarily model negative social behavior and who reward and reinforce deviant behaviors. Additionally, removal from the open community frequently results in undue stigmatization for the juvenile, militating further against positive behavioral changes which can be sustained in an open society. Finally, even in those few instances where positive behavioral changes have occurred in closed institutions, it has proven exceptionally difficult to transfer, generalize, or stabilize such changes in the open community (see Feldman et al., 1972, 1973).

In an effort to avoid the dysfunctional consequences of incarceration a number of alternative programs for

delinquents have been elaborated, especially community-based treatment programs (see Warren, 1970; Feldman et al., 1972, 1973). Likewise, the creation and institutionalization of the juvenile court system has represented an effort to avoid the dysfunctions of incarceration and to experiment with innovative and relatively nonstigmatizing ways of dealing effectively with juveniles. Yet, for the most part these programs, too, may be considered failures. Not only has the juvenile justice system failed to achieve its objectives (Cicourel, 1967; Platt, 1969; Warren, 1970), but, even worse, there is mounting evidence which suggests that increasing exposure to the "juvenile justice system" is correlated with enhanced likelihood of further and more serious delinquent behavior (Berleman, Seaberg, & Steinman,1972; Wolfgang, Figlio, & Sellin, 1974).

Social Labeling

In order better to understand the main liabilities of traditional justice systems, a number of sociological explanations have been formulated. Among the best known is the societal reaction, or social labeling, perspective. This perspective posits that exposure to juvenile justice systems -- which frequently may be generated by a near-random occurrence of primary deviance -- results in

significant labeling and stigmatization of the juvenile and, consequently, in the development of secondary deviance. In comparison with primary deviance, the latter may occur more seriously, more frequently, and more extensively, especially within the context of well-integrated peer group systems consisting of other delinquents or criminals. This perspective on deviance has been explicated cogently in a recent discussion by Kobrin (in press), who notes that the labeling perspective's

> main impact has been to focus attention on the effect of stereotypic categorizing on the behavior of young law violators. It is by now an item of common knowledge and conviction that insistence on perceiving and treating the young person in his often transient role as an offender can only result in his exclusion from groups of normals and his enforced association with similarly excluded others. In thus fastening on him the label of "delinquent", the youngster is in effect constrained to construct an identity as a delinquent, and consequently to increase both the frequency and seriousness of his delinquent acts. The crucial agents in promoting this transformation are, moreover, the functionaries with official responsibility for

> maintaining social control -- police, courts, and correctional workers. Representing as they do the dignity and power of the total society, they convey to those whom they define and deal with as delinquents the weight of collective judgment. Thus labeled, the young offender is confronted by what must seem to him incontrovertible evidence of who and what he is, and by the task of constructing a life organization on the basis of this identity. In brief, labeling theory has without question provided an accurate description of how the institutional machinery devised to prevent and control the deviance we call delinquency in fact fosters such deviance by unavoidably treating youngsters as categorical objects. (pp. 4-5)

In an effort to avert undue labeling, stigmatization, and secondary deviance, there have been numerous efforts to develop new modes of diversion within the juvenile justice system, to "un-label" criminals through the expungement of formal records, and to avoid labeling by withholding delinquents from the juvenile justice system or by abolishing such systems altogether. Some proponents have argued trenchantly for a strategy of "radical nonintervention," which presumably would preclude the dysfunctions of negative labels and of incremental exposure to juvenile "justice" systems (Schur, 1973).

Legal Lexicon and Social Labeling

In addition there have been efforts to avoid undue stigmatization of juveniles and to encourage diversion from traditional justice programs through the creation of special, and relatively ambiguous, offender categories. These include what have commonly been known as juvenile status offenses, that is, those "offenses" in which a child has committed no crime but refuses to accept lawful authority (e.g., parents, custodians, school, or community) and is therefore viewed as unruly or incorrigible. Related categories include "persons in need of supervision" (PINS), "children in need of supervision" (CHINS), and "juveniles in need of supervision" (JINS). Such categories usually have been established because their proponents have argued that (1) the problems of the status offender are different from those of the delinquent and require different treatment, (2) the status offender has not been found guilty of a crime and should not be incarcerated with delinquent youth, and (3) the label of a delinquent -- though its purpose may have been benign -- is widely viewed as criminal and, therefore, represents a labeling that is both unjust and detrimental when applied to

youth who have committed no criminal acts (see Calof, 1974).

The central thesis to be presented here, however, is that such efforts to avoid undue labeling have had precisely the opposite effect. They have resulted in a legal lexicon which contributes to adverse behavioral consequences for those who fall within its scope. These consequences include undue exacerbation, exaggeration, and prolongation of stigmatizing labels for juveniles. This dysfunctional interaction between lexicon and labeling militates against the development of systematic and effective rehabilitative programs for juveniles.

Some of these problems have been reflected in the larger debate regarding whether or not juvenile status offenses should be retained within the jurisdiction of juvenile courts. The importance of the issue is seen in the fact that it is being intensively studied by at least two commissions: the National Joint Institute of Judicial Administration-American Bar Association Commission on Juvenile Justice Standards, and the New York State Commission on Child Welfare. As Calof (1974) has noted, numerous professional groups have argued in favor of abolishing juvenile status offenses and have

presented a broad range of rationales. It has been asserted, for instance, that there is little or no evidence that status offenders are helped by court intervention; that any contact with the juvenile justice system is damaging; and that, hopefully, children who are spared the stigma and destructiveness of court processing will grow up to be productive individuals. It also has been argued that juvenile status offense programs consume a disproportionate amount of court resources.

Another dysfunction of the status offense category is that many children who have committed official and serious offenses are labeled incorrectly as status offenders -- sometimes as a result of plea bargaining and, in other instances, as a consequence of the well-intentioned efforts of court personnel. This has the effect of seriously underlabeling some juveniles who may be in great need of service. Conversely, and perhaps more important, it has been suggested that status offenders -- who may have committed no legal offense at all -- are more likely to be detained and to be incarcerated longer than official delinquents! If this observation is valid and if it is true that increased

incarceration increases the likelihood of a delinquent career, how beneficial can it be to label juveniles with the presumably nonstigmatizing label of "person in need of supervision"?

Of related concern are the results of one study which suggest that PINS may be among the most seriously at-risk and/or disturbed children, if not the most officially delinquent, in terms of such indicators as diagnostic evaluations, prior psychiatric hospitalization, drug abuse, IQ scores, troubled siblings, and mental or physical illnesses among their custodians. In a survey of 316 PINS children, the New York State Office of Children's Services found that 25 percent were on medical suspension and 75 percent were hopelessly behind in reading levels (see Calof, 1974). Finally, it has been argued that those who primarily administer PINS programs (family court judges) are least qualified to make expert decisions in view of the highly political basis for their selection and appointment.

In contrast, those who oppose the abolition of juvenile status offenses present a number of key arguments. First, the mere abolition of the offense category will not change the fact that behavioral offenses may

actually occur. Although "benign neglect" may diminish the likelihood of secondary deviance, the contrary also may be true (see Caldwell, 1974). Consequently it is necessary to label a juvenile's behavioral offense(s) correctly and to take appropriate corrective action.

Additionally, there are those who argue that (1) the state has a legitimate interest in a juvenile's behavior, education, and welfare, (2) the present categories and programs are needed because disadvantaged parents have nowhere else to obtain help, (3) abolition will not necessarily result in the establishment of effective alternative programs, and (4) benign neglect is more of an illusion than a social reality and, consequently, it may exacerbate and harden a juvenile's delinquent behavior. Judge Justine Wise Polier has argued, for example, that the extension of "benign neglect" principles to PINS represents an abdication of social responsibility. Moreover, she suggests that the argument that court intervention is unconstitutional is a specious one. As will be suggested here, the PINS jurisdiction -- as all jurisdictions -- should be based upon an adequate definition of actual conduct by a juvenile. The failure of PINS programs is largely associated with their inability to base adjudication

upon accurate definitions of juveniles' primary deviance and, consequently, to channel juvenile offenders to appropriate rehabilitative and treatment programs which are based upon a precise and time-limited definition of their delinquent behavior. This failure in the administration of juvenile justice may be far more widespread and significant than the purported dysfunctions of social labeling.

Social Labeling and Social Justice

The ongoing debate about juvenile status offenses will serve to highlight further the central thesis presented here and recently advanced by others (see, e.g., Hobbs, 1973, 1974) -- namely, that social labeling is neither necessarily dysfunctional nor necessarily functional for those who are labeled. Social labels can be considered significantly dysfunctional only and always when they are substantially inaccurate. In contrast, when social labels are precise and correct they are likely to contribute to precision and correctness in the adjudication of juveniles and in the subsequent provision of proper social services. Despite the positive intent of the legal lexicon, and of labels such as PINS and status offender, and despite the positive intent of

diversion programs and of the juvenile court system itself, such innovations have been failures for one major reason: they have contributed needlessly to the inaccurate labeling of juveniles. As a result, juveniles have been frequently channeled to grossly inappropriate service programs, if to any at all.

It should be noted that there are many causes of inaccurate labeling of juveniles. Perhaps the foremost is the fact that conventional labels, as well as major portions of the legal lexicon, tend to be inordinately global in nature. Such common labels as delinquent, incorrigible, ungovernable, status offender, and person in need of supervision are virtually worthless either in describing a juvenile's deviant behavior (and, therefore, the reason for his adjudication) or in prescribing appropriate treatment or other provision of service based upon that behavior. When a legal category or other social label is unduly broad or overly inclusive, its true meaning is obscured and the likelihood of inaccurate inference and stereotyping of the juvenile is enhanced. Likewise, the most appropriate strategy for remediation is obscured. When a label is unduly global, also, it seems more probable that persons categorized by the given label (such as status offender) will be

identified with the most visible members of the category (that is, with those who are most deviant and, presumably, readily recognized for their deviant behavior). This situation only serves further to stigmatize and isolate members of the labeled group.

Labels may err in either of two directions. First, those who apply a deviant label may overattribute, or overlabel, the extent of a juvenile's deviant behavior. Second, there may occur significant underattribution, or underlabeling, of deviant behavior -- a phenomenon which has been somewhat neglected by investigators but which, nonetheless, is one of the dysfunctions of contemporary juvenile justice systems.

Nonspecific lexicon, including the status offender label, tells one little about the precise types of deviant behavior(s) exhibited by a juvenile, the seriousness of those behaviors, their frequency, or their social context. A label ascribed to a juvenile cannot be accurate if it either overattributes or underattributes deviant behavior; similarly, a label will be of no diagnostic or rehabilitative value if it is devoid of referents to the types, seriousness, frequency, or social context of the juvenile's deviant behavior, including its social antecedents and consequents.

A major contributing factor in mislabeling is that

many official labelers, such as family court judges, abdicate their labeling responsibilities to others (e.g., court social workers). Even worse, they sometimes change a delinquent label to the PINS category with the mistaken objective of preventing secondary deviance, avoiding stigmatization, or forestalling incarceration. Since this rarely negates the actual fact of a juvenile's deviant behavior and, moreover, precludes the likelihood of properly prescribed treatment, such actions represent wholly untenable solutions to problems of mislabeling.

Mislabeling also occurs when those who label a juvenile are inexpert at the process. Such labelers may be untrained in diagnosis, may overgeneralize from an isolated instance of deviant behavior, or may base an incorrect label on invalid, unreliable, or unsystematic data.

Finally, a serious problem is the oft-observed tendency to extend the life of a label far beyond its legitimate existence. That is, a once-properly-assigned label, for a deviant act which may have taken place at an early point in a juvenile's career, frequently may be perpetuated through later stages of his/her development when, in fact, it may be manifestly inappropriate or

invalid. This phenomenon represents a bona fide instance of labeling theorists' concern about the potential generation of secondary deviance.

In brief, then, accurate description, definition, and labeling are necessary to effective societal functioning. Such labeling cannot be accomplished without an adequate legal lexicon. Labeling per se must not be regarded as the bête noire of contemporary juvenile justice. Inaccurate labeling is what underlies many of the dysfunctions of current juvenile justice and rehabilitative systems. Accurate labeling, in contrast, is necessary for functional social systems.

To attempt to deal with problems of inaccurate labeling by avoiding the labeling process altogether (as in radical nonintervention) represents no solution whatever. On the contrary, as suggested by some experimental studies (Asch, 1952; Feldman, 1974), the ambiguity or absence of requisite societal evaluations may heighten juveniles' anxiety, enhance their susceptibility to momentary social pressures, or otherwise exacerbate tendencies toward many of the selfsame behavioral problems most commonly associated with mislabeling. Moreover, a radical-nonintervention approach is likely to work

effectively only in a totally benign social environment--which can hardly be realistically anticipated.

Toward Accurate Lexicon and Labeling

Regardless of the structural reasons for inaccurate social labeling, it is posited here that any efforts to de-label, un-label, counter-label, or non-label juveniles' deviant behavior are likely to be unproductive at best and counterproductive at worst. Rather, the only viable strategy for dealing effectively with deviant behavior, and particularly with that behavior induced by inaccurate labels, consists of (1) accuratization, that is, the accurate and precise defintion of deviant behavior, its referents, and its social context, (2) lexicon construction, that is, the development of a correspondingly discrete and precise legal lexicon, and (3) prescription, that is, the provision of effective social services based upon accurate definitions of juveniles' misbehavior.

Any other approach is likely to give undue latitude to adjudicatory decision makers, enhance the likelihood of arbitrary decision making, and foster unintentional abuse of decision makers' discretionary power. Furthermore, any other approach would serve only to perpetuate

and/or exacerbate the unpredictable and inconsistent relationships between a juvenile's label and the prescription of service, leading to inappropriate overintervention, inappropriate underintervention, and inappropriate nonintervention -- all of which may be considered serious problems for the dispensation of true juvenile justice.

Finally, if accuratization focuses properly upon the social context of juvenile delinquency, such an approach need not be regarded as one which necessarily militates against needed societal change at the expense of individual juvenile delinquents. To the contrary, more accurate specification of the social causes of delinquent behavior -- along with the more accurate measurement of juveniles' maladaptive responses -- is likely to stimulate systematic and constructive social change.

Ironically, contemporary juvenile justice systems may have failed primarily because they have rarely been activated. More specifically, seriously deviant juveniles frequently have not been exposed to rehabilitative programs because society has underlabeled the extent of their deviance (Williams & Gold, 1972; Gingerich, Feldman,

& Wodarski, 1974). And, conversely, relatively non-deviant juveniles have been overlabeled and consequently have been exposed unnecessarily to social processes that may cause secondary deviance. Even more unfortunate, in their efforts to cope with such problems, some juvenile justice personnel frequently have opted to avoid any attributions or labels whatever, as if such an approach could vitiate primary deviance.

If any juvenile justice system is to operate effectively, it must predicate its activities on precise and accurate definitions of juveniles' behavior. To ensure this precision and accuracy, a number of steps must be taken. First, official labelers must, in fact, be experts at social labeling. Either the present official labelers should be highly trained or their labeling responsibilities should be officially delegated to those who are so trained. Labels must be highly specific; yet, in total, they must provide an exhaustive inventory of juveniles' deviant behavior. All relevant instances of deviant behavior should be recorded; and the type, seriousness, social context, and frequency of the behavior should be indicated. To date, attempts to define the seriousness of various types of deviant behavior have been

somewhat limited. However, there have been a number of significant efforts to categorize certain types of deviant behavior according to their qualitative seriousness (e.g., Sellin & Wolfgang, 1964).

The frequency of juveniles' deviant behavior should be defined through the use of valid and reliable measurement procedures. These should be based upon appropriate time-sampling methods and should entail reliability checks by a variety of independent raters (such as parents, teachers, guidance counselors, or peers) who use similar formats for recording their observations and report their judgments to the same labeling agent. In addition to providing necessary verifications of deviant behavior, such procedures may be of immense diagnostic value insofar as they reveal situational or time variations in a given juvenile's pattern of deviant behavior. To the extent that these objectives are achieved they will help to diminish broad-scale stereotyping and stigmatization of juveniles, even for those who have, in fact, committed bona fide delinquent acts. Finally, at predetermined intervals, legitimately authorized labelers should be compelled to review a juvenile's behavior, status, and concomitant label.

Accordingly, they should be entitled to expunge a label from a juvenile's record when effective rehabilitation has occurred. This safeguard will serve to neutralize the invidious process whereby incorrect labels are unduly perpetuated beyond the period for which they are truly valid. The foregoing process will also force an ongoing examination of the congruence between available legal lexicon, labeling categories, and alternatives for disposition.

Once accurate definitions of a juvenile's deviant behavior are ascribed, an effort should be made to prescribe a program of treatment which will reduce or eliminate those behaviors. Otherwise the labeling process, even if accurate, is likely to be of little avail. Such a program need not necessarily concentrate upon the juvenile alone. For maximum effectiveness it might focus upon parents, peers, teachers, or others who might be integrally linked with the juvenile's maladaptive behavior. The same criteria and methods used for measuring the juvenile's original deviant behavior also should be used for evaluating the effectiveness of the prescribed treatment program. After an accurate label is assigned, it should not be removed for any

reason whatever, including plea bargaining. The label should be removed only when it becomes inaccurate; ideally, this should occur only after rehabilitation has taken place. Preferably, the removal of an adjudicating label should be accomplished by the same societal agent who originally affixed it. Finally, for maximum effectiveness, those who affix and remove deviant labels for society should be systematically and objectively evaluated for the quality of their own performance. Only through such a procedure can a society ensure the expertness of its labeling agents and properly guarantee their legitimation and acceptance by those who are subject to the labelers' authority.

Summary

Society has an inescapable obligation to define and accurately label the behavior of its constituents. This must be done both to ensure proper rewards for those who function adaptively and to ensure provision of proper services and requisite sanctions for those who function maladaptively or deviantly. To forego accurate labeling and properly planned intervention is not likely to eliminate or even reduce societal deviance. To the

contrary, a paucity of accurate definition and precise labeling is likely to lead to ambiguous behavioral expectations, generally anomic social relations, and inadequate dispensation of justice.

In large part, efforts to label deviant behavior accurately have been thwarted by the immature state of conceptual knowledge, the lack of appropriate methodology, the misallocation of fiscal resources, and the inadequacies of current legal lexicon. Yet it is probable that allocation of more societal resources to accuratization of labeling and construction of a more adequate legal lexicon would reduce the injustices inherent in contemporary juvenile justice systems. It would then be possible to provide better specified and more effective social services for juvenile offenders. With proper safeguards for the removal and expungement of outdated social labels and with the replacement of maladaptive labels by accurate ones leading to effective rehabilitation, youth who pass through juvenile justice systems might have their best possible opportunities for obtaining true social justice as well as optimum self-actualization.

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